THE HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.7917 of 2006

–

Dated: June 9, 2006

–

–

Between:

Dandu Ramakrishnam Raju, S/o. Ranga Raju,
aged about 48 years, and two others.

… Petitioners

And

The Divisional Forest Officer, Eluru, West
Godavari District, and two others.

… Respondents

Order:

In this writ petition, petitioners are seeking declaration by way of Mandamus to the effect that the fish tanks constructed by them in the land bearing S.Nos.791-B, 791-B, 781 and 789 of Pothunuru Village, Denduluru Mandal, West Godavari District are not contrary to the notification issued under the Wild Life (Protection) Act, 1972 ('the Act' for brevity) and the provisions of the Act and further to declare the steps being taken by the respondents to demolish the tanks as illegal and arbitrary.

2. It is the case of the petitioners that they are the owners and possessors of land admeasuring Ac.8.00 cents, Ac.11.00 cents and

Ac.5.00 cents respectively, covered by S.Nos.791-B, 791-B, 781 and 789 of Pothunuru Village, Denduluru Mandal, West Godavari District. It is further their case that as the said lands have become unfit for cultivation due to frequent floods causing inundation, they are using the said lands for pisciculture by constructing fish tanks about 15 years back. It is stated that though the said lands are private patta lands, which are not covered by notification issued under the Act, the respondents, without conducting any enquiry and without issuing any prior notice, are taking steps for demolishing the fish tanks constructed by them.

3. Counter Affidavit has been filed by the Divisional Forest Officer, Eluru, on behalf of the respondents, stating that Kolleru Lake is one of the largest fresh water lakes having international importance and it attracts rare species of birds. Having regard to the importance of avian fauna, the State Government has issued preliminary notification of Kolleru Wildlife Sanctuary under Section 18 of the Act in G.O.Ms.No.76, Environment, Forest, Science and Technology, dated 25-09-1995 and after following due procedure, final notification was issued in G.O.Ms.No.120 dated 04-10-1999, declaring Kolleru Lake as Wild Life Sanctuary. The validity of the said notification came to be questioned before this Court in W.P.No.33587 of 1998 and batch and this Court has upheld the validity of the notification issued in G.O.Ms.No.120. It is stated that the said judgment has been confirmed by the Apex Court and demolition of the fish tanks in the notified area is being undertaken pursuant to the directions issued by the Apex Court. Precisely, it is the case of the respondents in the counter affidavit that the area of the petitioners is covered by the final notification issued under Section 26-A of the Act. As much as

pisciculture on commercial lines is prohibited and as the activity of the petitioners is in contravention of the notification, steps for demolition are being taken in view of the directions issued by the Apex Court.

4. Heard Sri C. Ramachandra Raju, learned counsel for the petitioners and Sri C.V. Mohan Reddy, learned Advocate General appearing on behalf of the respondents.

5. Sri C. Ramachandra Raju, learned counsel for the petitioners, submits that a perusal of the notification filed in the material papers does not indicate the lands of the petitioners being notified; in that view of the matter it cannot be said that the lands of the petitioners are covered by the notification under the provisions of the Act. He further submits that in any event, as the fish tanks are not constructed in the Kolleru Lake, as such, the directions issued by the Apex Court will not apply to the petitioners' lands.

6. On the other hand, Sri C.V. Mohan Reddy, learned Advocate General, submits that notifications were issued covering the lands in the village of Pothunuru with boundary description which runs along the contour at +5 MSL marked in the map; in view of the same, it is not open for the petitioners to plead that the said area is not covered by the notification. He further submits that similar such contentions with regard to applicability of the directions to the private patta lands, which were not acquired, have also been considered by the Apex Court and in view of the report submitted by the Steering Committee, time-bound directions were issued by the Apex Court and, in implementation thereof, steps are being taken for removal of the fish tanks constructed illegally in contravention of the notification issued under the Act.

7. From a reading of the provision under Section 26-A of the Act, it

is clear that the activity of pisciculture on commercial basis is prohibited. However, fishing with traditional methods using mavus, nets of size (which does not cause damage to seed but catches only fish of harvestable size) is permitted by such notification. The State Government is empowered to constitute an area as a sanctuary, initially by publishing notification under Section 18 of the Act. Declaration of such sanctuary can be made by describing the area by roads, rivers, bridges or other well-known readily intelligible boundaries. After issuance of such notification, to constitute an area as a sanctuary, final notification has to be issued under Section 26-A of the Act. In this case, with regard to the Kolleru Wild Life Sanctuary, at the first instance, preliminary notification was issued in G.O.Ms.No.76, E.F.S. & T (For.III) Dept dated 25-09-1995 under Section 18 of the Act and further declaration was issued as required under Section 26-A of the Act, vide G.O.Ms.No.120 dated 04-10-1999. As per the said final notification, the petitioners' lands along with the contour at +5 MSL have been marked in the map. Though, learned counsel for the petitioners submits that such map is not available, it is to be seen that the notifications have been notified in the Public Gazette, which is a notice in general to all. Merely because the petitioners could not see the description in the map, it cannot be said that the area of the petitioners is not notified under the provisions of the Act. Notifications were issued covering the lands of the petitioners with boundary description, which runs along the contour at +5 MSL as marked in the map in this regard. In that view of the matter, the contest of the learned counsel for the petitioners that the lands of the petitioners are not notified under the provisions of the Act cannot be accepted. As much as, as per the notification, pisciculture on commercial lines is prohibited, the respondents are justified in taking

steps to demolish the fish tanks of the petitioners. Further, it is to be seen that the validity of G.O.Ms.No.120 itself came to be questioned before this Court in W.P.No.33587 of 1998 and batch and a Division Bench of this Court has already upheld the validity of the said G.O. The Apex Court has considered the validity of the recommendations made by the Central Empowered Committee in its report dated 20-03-2006 with regard to the implementation of the final notification issued under Section 26-A of the Act and observed as follows in Writ Petition © No.202 of 1995. -

> "… Therefore, it is not open to the objectors now to say that they have made huge investments which would be lost if the report of the CEC is implemented. As stated hereinabove, in the preceding year free flow of water into the sea was blocked for 40 days. Such blocking of water also affects the livelihood of farmers cultivating lands in the upstream mandals. The oil cakes used as manure also pollute the lake. By issuance of the Notification the government has taken a step in the right direction and it is not open to this Court to tell the government as to which of the three effluents in terms of their discharge should be regulated first in point of time. In the present case, as stated above, the blockage is due to discharge of effluents from three sources, namely, fish tanks in and around the lake containing high concentration of nutrients, effluents from municipal drainage and effluents emerging from the industries located in and around the above two districts. Destruction of the fish tanks is one of the steps taken by issuance of the Notifications. That has to be done at the earliest point of time, particularly, before the onset of the monsoon."

8. Though learned counsel for the petitioners submits that fish tanks constructed by them are not within the area of Kolleru Wild Life Sanctuary and are in their private patta lands, but as much as the notification covers the lands of the petitioners also, and in view of the directions issued by the Apex Court for removal of such tanks constructed illegally in a time-bound drive, it cannot be said that the action of the respondents is illegal and arbitrary. In that view of the matter, I do not find any illegality in the action of the respondents in taking steps for demolition of the fish tanks constructed by the

petitioners in the notified area. Further, similar such questions were already considered by this Court in W.P.No.8056 of 2006 and batch and rejected by order dated 28-04-2006.

9. For the foregoing reasons and also for the reasons, which were already recorded in W.P.No.8056 of 2006 and batch, I do not see any ground to grant the relief as prayed for.

10. The writ petition is devoid of merits and is accordingly dismissed. Consequently, the order dated 19-04-2006 passed by this Court stands vacated. No order as to costs.

JUSTICE R. SUBHASH REDDY.

June 9, 2006
MRR